16-536

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 104.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

DAVID F. POWER, PATRICK DENVIR, AND DENNIS CRONAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED OCTOBER 18, 1879.

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1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the circuit court of the United States for the district of Massachusetts, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between the United States of America, plaintiffs, and David F. Power and Patrick Denvir, both of Boston, in said district, and Dennis Cronan, of the city of New Orleans, in the district of Louisiana, commorant of said Boston, defendants in an action of contract, a manifest error hath happened to the great damage of the said plaintiffs, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twentieth day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

JOHN G. STETSON,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—

JOHN LOWELL,
Circuit Judge.

2 Circuit court of the United States, district of Massachusetts, ss.

And now here the judges of the circuit court of the United States in and for the district of Massachusetts make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, John G. Stetson, clerk of said circuit court of the United States in and for the district of Massachusetts, have hereto set my hand and the seal of said court this sixth day of October, A. D. 1879.

[SEAL.] JOHN G. STETSON, *Clerk.*

3 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States, begun and holden at Boston, within and for the district of Massachusetts, on Thursday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

Before the honorable Thomas L. Nelson, district judge.

THE UNITED STATES OF AMERICA, PLAINTIFFS,
v.
DAVID F. POWER AND PATRICK DENVIR, both of Charlestown, in our district of Massachusetts, and Dennis Cronan, of the city of New Orleans, in the district of Louisiana, but now commorant of Boston, defendants in an action of contract.

And the plaintiffs say that the said defendant David F. Power as principal, and the said defendants Patrick Denvir and Dennis Cronan as sureties, executed to them a bond, a copy whereof is hereto annexed, marked A.

And the plaintiffs say that the said Power did not faithfully discharge all his duties as such acting assistant paymaster in the United States Navy, but did fail to account to the said plaintiffs for a large amount of money due from him to them, to wit, for the sum of nine thousand two hundred and ninety-one and $\frac{30}{100}$ dollars. And so the plaintiffs say that the defendants have not complied with the condition of said bond, but have wholly broken the same; and the said defendants jointly and severally owe the said plaintiffs the said sum of nine thousand two hundred ninety-one and $\frac{30}{100}$ dollars, and interest thereon at the rate of six per centum per annum, from the twenty-fifth day of August, A. D. 1865, to the damage of the said United States, as they say, the sum of twenty thousand dollars.

5 (Copy.)

A.

That we, David F. Power, of Charlestown, in the county of Middlesex, in the State of Massachusetts, as principal, and Patrick Denvir, of Charlestown, in the county of Middlesex, and State of Massachusetts, and Dennis Cronan, New Orleans, in the parish of Orleans, in the State of Louisiana, as sureties, are held and firmly bound unto the United States of America in the sum of ten thousand dollars, lawful money of the United States, to be paid to the United States; for which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, in the whole and for the whole, jointly and severally, firmly by these presents. Sealed with our seals and dated this twelfth day of November, anno Domini one thousand eight hundred and sixty-three.

The condition of the above obligation is such that if the above-bound David F. Power shall faithfully discharge all his duties as act'g ass't paymaster in the Navy of the United States then the above obli-
6 gation to be void and of no effect; otherwise to be and remain in full force and virtue.

DAVID F. POWER. [L. S.]
PATRICK DENVIR. [L. S.]
DENNIS CRONAN. [L. S.]

[50 cents. Cancelled. 50 cents.]

Signed, sealed, and delivered in the presence of—
CHAS. E. SWEENEY,
For D. F. P. & P. D. and D. C.

The writ in this cause is dated the twenty-seventh day of March, A. D. 1875, whereupon the marshal of our district made his return in the words following:

UNITED STATES OF AMERICA,
Massachusetts District, ss:

BOSTON, *27th March*, 1875.

Pursuant hereunto I have this day, at 1 o'clock p. m., attached all the right, title, and interest which the within-named defendants, or either of them, then had in and to any and all real estate within the county of Suffolk, in said district, and afterwards, on the same day, I deposited with the register of deeds for said county a copy of this writ, with so much of my return thereon as relates to this attachment. On the 2d of April, 1875, I gave in hand to the within-named Pat-
7 rick Denvir a summons of this writ for his appearance at court as within directed. I have made diligent search for the within named Dennis Cronan & David F. Powers, but have not found them within my district.

Fees: Serv. & tr., 4.12; copy, 1; paid reg., .75.—$5.87.

R. G. USHER,
U. S. Marshal.

This cause was entered at the May term of this court, A. D. 1875, when the plaintiffs appeared by their attorney, and the defendant Patrick Denvir appeared by his attorney, and thence this cause was continued from term to term to the present May term of this court, A. D. 1879, when the honorable John Lowell, circuit judge, sitting, the said defendant Patrick Denvir, admitting the forfeiture of the bond declared upon and consenting to entry of judgment, and it being made to appear to the court that there is due, according to equity, the sum of nine thousand two hundred and ninety-one dollars and thirty cents ($9,291.30), with interest thereon at the rate of six per centum per annum from March 27, 1875, the date of the writ in this cause to this present date, and that judgment should be entered accordingly: It is considered by the court, to wit, May 26, 1879, that the said
8 United States of America, plaintiffs, recover of the said Patrick Denvir, defendant, the sum of nine thousand two hundred and ninety-one dollars and thirty cents ($9,291.30), and the further sum of two thousand three hundred and twenty-two dollars and eighty-two cents ($2,322.82), being interest thereon from March 27, 1875, the date of this writ, to the present date, May 26, 1879, and their costs of suit taxed at .

Exceptions were duly taken by the plaintiffs in said cause before and at the time of entry of judgment therein, and being reduced to writing and found correct, are allowed by the court and ordered to be filed, and are filed as of May 26th, 1879; said exceptions and allowance thereof being in the words and figures following:

Circuit court of the United States, district of Massachusetts, May term, 1879.

THE UNITED STATES OF AMERICA }
v. } No. 678.
DAVID F. POWER ET AL. }

Plaintiffs' Exceptions.

9 This is an action against the principal and the sureties on the

official bond of David F. Power, acting assistant paymaster in the Navy of the United States. The writ is dated March 27, 1875. Service was had only on Patrick Denvir, one of the sureties, who appeared by counsel and defended the action.

The bond is dated November 12, 1863, and was duly executed. The condition of the bond is "that if the above bound David F. Power shall faithfully discharge all his duties as acting assistant paymaster in the Navy of the United States, then the above obligation to be void and of no effect; otherwise to be and remain in full force and virtue." The breach of the condition of the bond alleged in the plaintiffs' declaration is that the said Power did not faithfully discharge all his duties as such acting assistant paymaster, but failed to account for and pay over to the plaintiff the sum of nine thousand two hundred ninety-one dollars and thirty cents ($9,291.30); and the declaration further alleges that the defendants, jointly and severally, owe the plaintiff the said sum of $9,291.30, and interest thereon at the rate of six per
10 centum per annum from the twenty-fifth day of August, A. D. 1875, that day being the date of the last receipt of public money by said Power under said bond.

At the present May term, 1879, of this court, to wit, May 26, 1879, judgment was entered for the plaintiff for the penalty of the bond. In making up the amount for which execution should issue it was admitted that the principal sum due from Power was $9,291.30, as set forth in the declaration. The attorney for the plaintiff claimed that interest at the rate of six per cent. per annum should be charged on the sum from August 25th, 1865, the date of the last receipt of public money by said Power, to the date of the judgment, May 26, 1879, which would be the sum of $7,665.32.

Counsel for defendant contended that interest could be allowed only from the date of the writ. The court ruled and adjudged as matter of law that interest could be allowed only from the date of the writ, and directed that execution should issue for the sum of $9,291.30, principal debt, and interest from the date of the writ, amounting to $2.322.82, and for costs.

11 To which ruling and judgment, and the order fixing the amount for which execution should issue, the plaintiff, by its attorney, excepts, and prays the court that these its exceptions may be allowed.

THE UNITED STATES OF AMERICA,
By GEORGE P. SANGER, *U. S. Att'y.*

Exceptions agreed to be correct.

BENJ. F. BUTLER, *For Denvir.*

The foregoing exceptions having been examined and found correct are allowed.

T. L. NELSON,
Judge of the Circuit Court.

A true record. Attest:

JOHN G. STETSON, *Clerk.*

12 UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, John G. Stetson, clerk of the circuit court of the United States for the district of Massachusetts, within the first judicial circuit, certify that the foregoing is a true copy of the record of said circuit court in the cause of The United States of America, plaintiffs, v. David F.

Power et al., defendants, lately determined in said circuit court, and all proceedings therein.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court at Boston, in said district, this sixth day of October, A. D. 1879, and of the Independence of the United States the one hundred and fourth.

[SEAL.] JOHN G. STETSON, *Clerk.*

(Indorsement on cover:) No. 104. The United States, plaintiff in error, vs. David F. Power, Patrick Denvir, and Dennis Cronan. Massachusetts C. C. U. S. Filed 18th October, 1879.

16-536

OFFICE SUPREME COURT U.S.
FILED
JAMES H. McKENNEY, CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

THE UNITED STATES
vs.
DENVIR. } No. 104.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

THE UNITED STATES
vs.
DENVIR. } No. 104.

BRIEF FOR THE UNITED STATES.

This was an action against the defendant as surety upon the official bond of one Power, formerly an acting assistant paymaster in the Navy; and the question is as to the date from which interest on the original debt should be calculated.

The bond was dated November 12, 1863; its *condition* being that Power "shall faithfully discharge all his duties as acting assistant paymaster." The last receipt of public money was upon August 25, 1865; folio 10. MEM.—The *first* statement in that folio is evidently an error. See date of *writ*, and the *declaration*, folio 4, and also *second* statement in same folio. The writ was dated March 27, 1875; and judgment was given for $9,291.30, *and interest from the date of the writ.* To this the plaintiffs excepted, claiming interest from the date of the last receipt of public money.

The defendant did not plead, but consented to an entry of judgment.

Upon behalf of the plaintiffs, it is submitted that the above ruling, and also the above refusal to rule, constitute *error*.

For this contention, reliance is placed, as in *No.* 103, upon the following statutes and case, *quoted* in the brief for the government in *No.* 103:

Act of 1862, ch. 199, sec. 1 (12 Stat., 593; Rev. Stat., sec. 3622).

Act of 1797, ch. 20, sec. 1 (1 Stat., 512; Rev. Stat., sec. 3624).

Gaussen's case (97 U. S., 584); *distinguishing* Curtis's case (100 U. S., 119).

S. F. PHILLIPS,
Solicitor-General.